

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Alexander H. Frey, et al.Attorney Docket No.: **1841.09US01**Serial No.: **to be determined**

Art Unit:

Filing Date:

Examiner:

For: **CONTROLLER FAULT RECOVERY SYSTEM FOR A
DISTRIBUTED FILE SYSTEM**

DECLARATION FOR UNITED STATES PATENT APPLICATIONAsst. Commissioner for Patents
Box PATENT APPLICATION
Washington, D.C. 20231

Dear Sir:

As an above-named inventor, I here declare that:

1. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the above-identified invention, the specification of which is attached hereto unless the following is checked:

☐ The specification was filed on _____ as United States Application Number or PCT International Application Number 09/_____ and was amended on _____ (if applicable).

2. I hereby state that I HAVE REVIEWED AND UNDERSTAND THE CONTENTS OF THE ABOVE-IDENTIFIED SPECIFICATION, INCLUDING THE CLAIMS, AS AMENDED BY ANY AMENDMENT REFERRED TO ABOVE.

3. I acknowledge the duty to disclose information which is material to the patentability of the claims of this application as defined in Title 37, Code of Federal Regulations, §§ 1.56(a) and (b) which state:

“(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. *Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section* The duty to disclose information exists with respect to each pending claim until the claim is canceled or

withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any remaining claim under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information material to patentability when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability."

4. To the best of my knowledge and belief, the invention as defined by the claims of the above-identified application:

- (a) was not known or used in the United States of America before my invention thereof, or patented or described in any printed publication in any country before my invention thereof or more than one year prior to the filing of the above-identified application;
- (b) was not in public use or on sale in the United States of America more than one year prior to the filing of the above-identified application; or
- (c) has not been patented or made the subject of an inventor's certificate issued before the filing of the above-identified application in any country foreign to the United States of America on any application filed by me or my legal representatives or assigns more than six months prior to this application.

5. I hereby claim the benefit under Title 35, United States Code, § 119(e) of any United States provisional application(s) listed below.

(Application Number)

(Filing Date)

(Application Number)

(Filing Date)

6. I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application(s) in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

(Application Number)

(Filing Date)

(Status - patented, pending, abandon)

(Application Number)

(Filing Date)

(Status - patented, pending, abandon)

7. I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith:

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8. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

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Alexander H. Frey

Inventor's signature

9 Oct 00

Date

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